



POLICY SERVICES

SPECIAL ALERT

July 25, 2014

Further Information Regarding Data Privacy and Security

As you may recall, our office issued a Special Alert on June 11, 2014 regarding the recently adopted data privacy and security provisions contained in Section 2-d of the Education Law. At that time, we noted that the law requires a "parents bill of rights" to be completed within 120 days of the statute's effective date, or July 29, 2014. We also assured districts that we were aware of the pressing nature of this matter, and would provide additional information as soon as it became available.

At this time, it is still unclear whether the July 29 deadline was meant to be imposed on school districts or, alternatively, the State Education Department's "Chief Privacy Officer." Importantly, the language of Section 2-d contemplates that the parents bill of rights will incorporate elements developed by the Commissioner of Education and the Chief Privacy Officer. As of July 25, however, the position of Chief Privacy Officer remains vacant. Without this essential State appointment, districts face uncertainty as to their obligations under the law. Nonetheless, some districts may wish to provide information regarding data privacy and security to parents, staff, and other stakeholders while awaiting SED guidance. To this end, our office has prepared sample language, which is attached for your review and which may be helpful in communicating an awareness of the issues while we await additional information.

Please note that this sample language is not intended to serve as a complete and final parents bill of rights as required by the new law. The procedures set forth in Section 2-d of the Education Law preclude us from developing a full and final parents bill of rights that incorporates all of the necessary elements. Such document must include supplemental information for each contract a district enters into with a third party contractor where the third party contractor receives "student data" or "teacher or principal data." This supplemental information must be developed by districts, and must include the following:

- 1) The exclusive purposes for which the student data or teacher or principal data will be used;
- 2) How the third party contractor will ensure that the subcontractors, persons or entities that the third party contractor will share the student data or teacher or principal data with, if any, will abide by data protection and security requirements;
- 3) When the agreement expires and what happens to the student data or teacher or principal data upon expiration of the agreement;
- 4) If and how a parent, student, eligible student, teacher or principal may challenge the accuracy of the student data or teacher or principal data that is collected; and
- 5) Where the student data or teacher or principal data will be stored (described in such a manner as to protect data security), and the security protections taken to ensure such data will be protected, including whether such data will be encrypted.

Districts should consult their school attorneys to ensure that any document intended to serve as a complete and final parents bill of rights for data privacy and security is prepared and implemented in accordance with law.

In the absence of regulations or explanatory guidance, there remain a number of questions about the legislation and its interpretation and implementation. Our office is currently engaged in conversations with other stakeholders to discern its full impact and determine how best to assist our subscribing districts.

Attached for your review and use, please find the sample language discussed above, as well as the Special Alert originally sent by our office on June 11. If you have general questions regarding these documents, please do not hesitate to contact our office. If you have questions regarding the implementation of the new data privacy and security law and how it impacts your district, we encourage you to contact your school attorneys.

Policy Update Service

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NOTE: This Alert is not to be interpreted as the rendering of legal advice. Questions regarding the application of law to specific situations should be directed to your school attorney.



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INFORMATION REGARDING DATA PRIVACY AND SECURITY

The following information must be included as part of a parents bill of rights. While awaiting further guidance from the State Education Department, districts may find that conveying this language to stakeholders (through either the district website or a printed publication) is helpful in fostering an awareness of data privacy and security issues. This document, however, should not be considered a full and final parents bill of rights.

The School District is committed to protecting the privacy and security of student, teacher, and principal data. In accordance with Education Law § 2-d, the District wishes to inform the school community of the following:

- 1) A student's personally identifiable information cannot be sold or released for any commercial purposes.
- 2) Parents have the right to inspect and review the complete contents of their child's education record.
- 3) State and federal laws protect the confidentiality of personally identifiable information, and safeguards associated with industry standards and best practices, including but not limited to, encryption, firewalls, and password protection, must be in place when data is stored or transferred.
- 4) A complete list of all student data elements collected by the State will be available for public review at a later date.
- 5) Parents have the right to have complaints about possible breaches of student data addressed. More information about where to address those complaints will be provided at a later date.

If you have questions regarding the application of these provisions, or the manner in which the parents bill of rights must incorporate them, we strongly encourage you to contact your school attorneys.

